

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

NO. 77-4194

UNITED STATES COURT of APPEALS

FOR THE SECOND CIRCUIT

NEW YORK PRINTING PRESSMEN AND OFFSET WORKERS
UNION, NO. 51, INTERNATIONAL PRINTING AND GRAPHIC
COMMUNICATIONS UNION, AFL-CIO, LOCAL NO. 23,
NEW YORK PRINTING ASSISTANTS AND OFFSET WORKERS,
INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS
UNION, AFL-CIO, AND LOCAL 1, INTERNATIONAL PRINTING
AND GRAPHIC COMMUNICATIONS UNION, AFL-CIO,
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,
and

ARKAY PACKAGING CORPORATION,
Intervenor.

ON PETITION FOR REVIEW OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

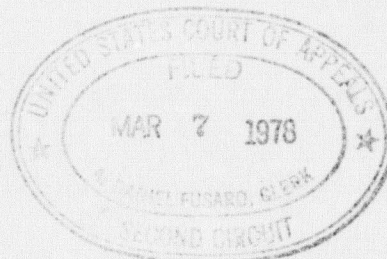
BRIEF FOR
THE NATIONAL LABOR RELATIONS BOARD

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51, INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS UNION,
AFL-CIO, LOCAL NO. 23, NEW YORK PRINTING ASSISTANTS AND OFFSET
WORKERS, INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS
UNION, AFL-CIO, AND LOCAL 1, INTERNATIONAL PRINTING AND
GRAPHIC COMMUNICATIONS UNION, AFL-CIO,

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Petitioners,

NATIONAL LABOR RELATIONS BOARD,

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Respondent,

ARKAY PACKAGING CORPORATION,

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ON PETITION FOR REVIEW OF AN ORDER OF THE NATIONAL
LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

COUNTERSTATEMENT OF THE ISSUE

Whether the Board properly concluded that the Company's refusal to bargain with the Unions did not violate Section 8(a)(5) and (1) of the Act because the Company had a reasonably based doubt of each Union's majority status.

COUNTERSTATEMENT OF THE CASE

This case is before the Court upon the petition of Locals 51 and 23, New York Printing Pressmen & Offset Workers, International Printing & Graphic Communications Union, AFL-CIO, and Local 1, International Printing & Graphic Communications Union, AFL-CIO (herein "Local 51," "Local 23," and "Local 1", or "the Unions"), pursuant to Section 10(f) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 88 Stat. 395, 29 U.S.C. Sec. 151, et seq.), to review a Decision and Order of the National Labor Relations Board, issued on December 17, 1976, and reported at 227 NLRB No. 59 (A. 14-35).^{1/} This Court has jurisdiction of the proceedings, the conduct alleged as an unfair labor practice having occurred in Hauppauge, New York.

I. THE BOARD'S FINDINGS OF FACT

The Company's employees were represented for several years in separate bargaining units by seven unions, including the three Unions involved herein (A. 26; SA. 1). Until 1974 the Company belonged to an employer association which negotiated collective bargaining agreements with all seven unions on the Company's behalf (A. 26; 118-119, 168A-2-168A-3, 190-191). In 1974 the Company withdrew from the association and negotiated directly and separately

^{1/} "A." references are to the printed appendix, and "SA" references are to the supplemental appendix reproduced at the end of this brief. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

at least with Locals 51, 23, and 1, and with Local 119B, Graphic Arts International Union, AFL-CIO (herein "Local 119B") (A. 26; 121, 168A-4, 191). The negotiations with Locals 51, 23, and 1 were successful and the Company entered into separate collective bargaining agreements with them, each of which contained a union security clause and was of one year duration (A. 26, 29; 121, 142, 168A-4, 194, 248, 252, 259, 270-271, 279-280, 283). The Local 51 agreement was to expire March 3, 1975, and the Local 23 and Local 1 agreements were to expire on April 30, 1975 (A. 26; 252, 270, 283).

The negotiations between the Company and Local 119B were unsuccessful, however, and on June 10, 1974,^{2/} Local 119B commenced an economic strike against the Company and picketing at the Company gate (A. 27; 42, 72, 124-125, 161, 169). The employees represented by Locals 51, 23, and 1 continued to work for the next two and a half weeks despite the Local 119B strike and picket line (A. 27; 42-43, 73, 125). These employees were often called "scabs" as they crossed the picket line and some found nails placed in the tires of their automobiles. Some of them, or their families, received telephone calls during which threats were made regarding their continuing to work. (A. 27; 44-45, 63, 74, 92, 96, 162-163.) In response to these incidents the Company told the employees that it would do everything it could to protect them, hired a private protection service, and paid for damage to the employees' automobiles (A. 27; 45, 49, 64, 83-84, 173).

^{2/} All events described infra occurred in 1974 unless otherwise specified.

On July 1, the employees and their respective Union representatives gathered before working hours in a parking lot near the Company plant to discuss this harrassment (A. 27; 49, 75-76, 90-91, 100, 101, 102, 113, 164, 174, 198). A majority of the employees determined to cease crossing the picket line, and comunicated this decision to the Union representatives who, in turn, informed the Company of the employees' decision (A. 27; 51, 76-78, 85, 102, 103, 106-107, 167, 174-175, 198-199). Thereafter, the employees refused to cross the picket line and to report to work (A. 27; 41, 51-52, 108, 176, 200, 209).

On July 5, the Company sent mailgrams to each of the striking Local 51 employees advising that they would be permanently replaced if they did not return to work by July 8 (A. 27; 55, 108-109, 168, 244). On July 10, the Company sent mailgrams to employees represented by Locals 23 and 1 advising that they were being replaced (A. 15, 27; 52, 56, 79, 245). The Company also sent similar communications to the respective Locals, stating that the work refusal breached the no strike clauses in the collective bargaining agreements and that the Company was free to replace the employees (A. 15, 27; 132, 176, 200, 243, 274, 288). The Unions did not respond to the plan to hire replacements (A. 15, 27; 134, 151, 155-156, 200-201).^{3/}

^{3/} By letter dated July 15, Local 23 denied any contract breach, but did not comment on the Company's stated intention to replace the employees (A. 177, 275).

The Company then replaced the four employees represented by Local 51 with two employees, and the seven employees represented by Local 23 with six employees (A. 15-16, 31; 137-138, 210-212, 227, 235, 253, 292^{4/}). The work performed by the four Local 1 employees was performed by three employees who were represented by another union in the plant (A. 31; 212, 236, 253 236, 253, 293^{5/}).

The replaced employees and their respective Locals then had no contact with the Company until early 1975 (A. 16, 28; 151-152, 186-187, 213-214). Nor, during this period, did the Unions attempt to enforce the union security or dues checkoff provisions of the collective bargaining agreements, or require the Company to make health and welfare and pension fund contributions on behalf of the replacements, or otherwise police the agreements (A. 16, 28; 142-143, 213-214, 248-249, 259-260, 279-281, SA. 2-6).

By letters dated January 23 and April 5, 1975, Locals 51 and 1, respectively, requested the Company to negotiate new agreements with them, and in an undated letter sent at the end of March 1975, Local 23 asked the Company to sign a new agreement which it enclosed (A. 28; 140, 178-179, 186, 202, 254, 272, 289). The Company, by letters, refused each of these requests for the stated reason that the Unions no longer represented a majority of the employees in their respective units (A. 28; 141-142, 179-180, 202, 255-256, 276-277, 290-291).

4/ Local 51 actually had seven members at the Company, three of whom were supervisors (A. 31; 148-149).

5/ At the hearing the Company did not specifically state how many employees were performing the work, but did testify to a 20 percent reduction in business (A. 31; 236). The Administrative Law Judge found, in light of this business reduction, that the work was being performed by three employees (A. 31).

II. THE BOARD'S CONCLUSIONS AND ORDER

Based on the foregoing facts the Board, Member Jenkins dissenting,^{6/} found that the Company had an objective basis for a reasonably based doubt of the Unions' continued majority status, and concluded that the Company had not violated Section 8(a)(5) and (1) of the Act.^{7/} Accordingly, the Board dismissed the complaint. (A.14-18.)

ARGUMENT

THE BOARD PROPERLY CONCLUDED THAT THE COMPANY'S REFUSAL TO BARGAIN WITH THE UNIONS DID NOT VIOLATE SECTION 8(a)(5) AND (1) OF THE ACT BECAUSE THE COMPANY HAD A REASONABLY BASED DOUBT OF EACH UNION'S MAJORITY STATUS

A. Controlling Principles

It is well established that, absent special circumstances, a union enjoys an irrebuttable presumption of majority status for a year after its certification, or, if it was voluntarily recognized, for a reasonable period of time. Thereafter, the presumption of majority status remains in effect but becomes rebuttable.

^{6/} Member Jenkins would have found that the Unions' period of inactivity was not a basis for a doubt of majority status in light of their requests for negotiations. He also would have required the Company to consider the striker replacements Union supporters absent evidence to the contrary, and to count the strikers themselves as part of the unit (A. 19-24.)

^{7/} The Board also dismissed an allegation that the Company had violated Section 8(a)(1) by promising benefits to employees to induce them to refrain from supporting the Unions (A. 18, 32). The Unions do not seek review of this determination before this Court.

Brooks v. N.L.R.B., 348 U.S. 96, 98-104 (1954); Retired Persons Pharmacy v. N.L.R.B., 519 F.2d 486, 489 (C.A. 2, 1975); N.L.R.B. v. Cayuga Crushed Stone, Inc., 474 F.2d 1380, 1383 (C.A. 2, 1973); N.L.R.B. v. Frick Co., 423 F.2d 1327, 1330-1332 (C.A. 3, 1970). An employer may rebut this presumption of continued representation, and thereby lawfully refuse to bargain, in either of two ways: (1) by showing that on the date it withdrew recognition the union did not in fact enjoy majority support, or (2) "by presenting sufficient evidence to show that the refusal to bargain was based on a serious good faith doubt of the union's majority." Retired Persons Pharmacy v. N.L.R.B., *supra*, 519 F.2d at 489. See, e.g., Terrell Machine Co. v. N.L.R.B., 427 F.2d 1088, 1090 (C.A. 4, 1970), cert. denied, 398 U.S. 929; N.L.R.B. v. Gallaro, 419 F.2d 97, 100 (C.A. 2, 1969). It is manifest that either showing completely justifies an employer's refusal to bargain. Thus, "[a] good faith doubt exculpates the employer even if the union in fact represented a majority of the employees." N.L.R.B. v. Dayton Motels, Inc., d/b/a Holiday Inn of Dayton, 474 F.2d 328, 331-332 (C.A. 6, 1973). Accord: Celanese Corp. of America, 95 NLRB 664, 672 (1951), cited with approval in N.L.R.B. v. Burns International Security Services, Inc., 406 U.S. 272, 279 n. 3 (1972), and Brooks v. N.L.R.B., *supra*, 348 U.S. at 104 n. 18.

Of course, the employer's doubt must be based on "objective considerations" (Terrell Machine Co., 173 NLRB 1480, 1481 (1969), enf'd, supra; Retail, Wholesale and Department Store Union v. N.L.R.B., 466 F.2d 380, 393 (C.A.D.C., 1972)), and "may not depend solely upon unfounded speculation or a subjective state of mind" (N.L.R.B. v. Gulfmont Hotel Co., 362 F.2d 588, 589 (C.A. 5, 1966)). In short, the employer must "present clear and convincing evidence of loss of union support capable of raising a reasonable doubt of the union's continuing majority." Retired Persons Pharmacy v. N.L.R.B., supra, 519 F.2d at 489-490.

Further, whether the employer had a reasonable doubt of the union's majority at the time it withdrew recognition is a question of fact. The Board's determination should be affirmed if supported by substantial evidence. Orion Corp. v. N.L.R.B., 515 F.2d 81, 85-86 (C.A. 6, 1975); Allied Industrial Workers v. N.L.R.B., 476 F.2d 868, 883 (C.A.D.C., 1973). See N.L.R.B. v. Gulfmont Hotel Co., supra, 362 F.2d at 589. Thus, a reviewing court will not "displace the Board's choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it de novo." Universal Camera Corp. v. N.L.R.B., 340 U.S. 474, 488 (1951).

B. The Company's refusal to bargain was justified by its reasonably based doubt of each Union's majority status

In the present case, the Board held that the Company's withdrawal of recognition from the Union was lawful because the Company had a reasonable doubt of each Union's majority status at the time it refused to bargain. This doubt, the Board found, was properly founded upon the Unions' complete absence from the plant for over six months; the striking employees' apparent lack of interest in their jobs or Unions; and the striker replacements' lack of interest in the Unions. In their brief to this Court, the Unions attack each of these findings and contend that they do not furnish adequate grounds for a good faith doubt of majority. We show below that the Board's findings are amply supported and that they fully justify the Board's conclusion that the Company did not violate the Act.

As set forth in the Counterstatement, supra, pp. 4-5, employees represented by the Unions ceased crossing the Local 119B picket line on July 1, 1974. The Company immediately notified the Unions and employees that it would hire permanent replacements unless the employees reported to work. None of the Unions or employees communicated with the Company about its plan, and the Company proceeded to hire replacements. Although the Unions had notice that replacements would be hired, they never asked the Company whether it had actually hired new employees. The Unions also failed to enforce the union security and dues checkoff provisions in the contracts, and to require the Company to contribute to the Union health and welfare, and pension funds, on behalf of the new employees. Nor did the Unions in any other manner police their contracts or make their

presence known to the Company. Indeed, the Company heard nothing from the Unions or the former employees until January, March, and April, 1975, when the respective Unions requested negotiations over new agreements.^{8/} So far as the record indicates, the employees have never had any contact with the Company after July 1, 1974.

In the context of these facts, the Board could reasonably find, as it did, that the Company harbored a serious doubt of each Union's continued majority status. The Unions, for all practical purposes, had abandoned their units for over half a year by failing to enforce important contract provisions or otherwise remaining in touch with the Company. This complete lack of union activity, is an objective factor which properly supports a doubt of majority status. See Star Mfg Co. Div. of Star Forge, Inc. v. N.L.R.B., 536 F.2d 1192, 1194 (C.A. 7, 1976); N.L.R.B. v. Alva Allen Industries, Inc., supra, 369 F.2d at 320.

^{8/} This complete absence of contact was not in the context of a deadlock over a labor dispute in which the deadlock itself might implicitly show the union's presence. Rather, the strikers' refusal to work was wholly instigated by the employees; the Unions sought to adhere to the no-strike provisions in their contracts and did not encourage the employees' action. Further, since there was no dispute, the Unions had no reason to be uninterested in representing the replacements who were not crossing Union sanctioned picket lines, and thus had no reason to be absent from the plant. Cf. N.L.R.B. v. Alva Allen Industries, Inc., 369 F.2d 310, 320 (C.A. 8, 1966).

Further, the Company could discount union support among the strikers. The strikers ceased work on their own volition and without Union involvement in their decision. The Company thereafter heard nothing from them. Although as a general rule strikers are counted as members of the unit (C.H. Guenther & Son, Inc. v. N.L.R.B., 427 F.2d 983, 986 (C.A. 5, 1970) cert. denied, 400 U.S. 942), in light of the strikers' silence and the absence of any Union activity, the Company could reasonably assume that, like the Union, they also had abandoned their interest in re-employment, and, therefore, no longer consider them part of the unit.

Furthermore, the Company was not required to presume that the striker replacements, the only remaining members of the unit, supported the Union. As shown supra, p. 5, after the replacements were hired the Unions never appeared at the plant or in any other manner made the new employees aware of their existence. Instead, the Unions and the strikers abandoned the units. It is highly unlikely that striker replacements would support a union that was no longer on the scene. Moreover, there is no independent evidence that the replacements have ever shown an interest in being represented by the Unions (A. 213). On these facts the Company was not bound to consider them Union supporters. See N.L.R.B. v. Fansteel Metallurgical Corp., 306 U.S. 240, 262 (1939); Beacon Upholstery Co., 226 NLRB 1360, 1368 (1976); Celanese Corp. of America, supra, 95 NLRB at 674.^{9/}

^{9/} Surface Industries, Inc., 224 NLRB 155 (1976); Top Mfg Co., 230 NLRB No. 130 (1977), application for enforcement pending, (C.A. 9, 77-3062); and James W. Whitfield, d/b/a Cutten Supermarket, 220 NLRB 507 (1975), cited by the Unions are not controlling. In these cases the Board applied to striker replacements the general rule that new employees are presumed to support the union in the same ratio as those they replaced. None of these cases, however, contain the distinguishing fact present in the case at bar of a union's abandonment of the bargaining unit. See Windham Community Memorial Hospital and Hatch Hospital Corp., 230 NLRB No. 156, p. 2 slip opinion, 95 LRRM 1565, 1566 (1977), application for enforcement pending (C.A. 2, 77-4187).

The Unions contend that there was no abandonment because they had no reason to communicate with the Company in the face of the Union members' absence and the lack of notice that replacements had been hired (Br. 9). As shown, however, supra, p. 4, the Unions were notified that the Company planned to hire replacements, and so cannot now plead ignorance of the Company's action. Nor, contrary to the Unions' argument (Br. 9), did the requests for negotiations cure the effects of their lengthy period of inactivity. In the circumstances here, the Company could reasonably assume that the Unions' absence had taken its toll on their majority status. The mere requests to bargain, unaccompanied by any claim of support among the strikers, or indication from the strikers—long since replaced—that they had any interest in their former positions, were insufficient to re-affirm the Union's majority status.

Equally irrelevant is the fact that the Company may have acknowledged the viability of the contracts during their terms by continuing to deduct dues and pension and welfare contributions on behalf of the single Union member employed throughout the strike (Br. 9). The question is not what the Company did but what the Unions did. Here, while the Company may have continued to observe the contracts, the Unions seemingly did not. In those circumstances, as we have already shown, the Company could genuinely assume that its actions were not being reciprocated because the Unions had lost
10/
interest in the units.

10/ The Unions' suggestion that the Company did something improper by "withdrawing union recognition during the term of the collective bargaining agreements" (Br. 9) is misleading. The Company did not withdraw recognition for the purpose of administering the existing contracts but for the purpose of negotiating new contracts.

The cases relied on by the Unions are inapposite. In Pioneer Inn Associates, 228 NLRB No. 160, 95 LRRM 1225 (1977), the union's inactivity was found irrelevant because the union had actively pursued a grievance and administered its contract during the six months preceding the refusal to bargain. There was no such conduct prior to the Company's refusal in the case at bar by which the Unions reasserted their presence. In N.L.R.B. v. Leatherwood Drilling Co., 513 F.2d 270 (C.A. 5, 1975), cert. denied, 423 U.S. 1016, the court found that the Company could not have expected greater activity in view of the dispersal of the fifty drilling rigs at which the union represented employees over an area of 95,000 square miles. No such facts are present here.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for review should be denied.

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National Labor Relation Board.

February, 1978.

Supplemental Appendix

Excerpt from transcript of hearing before Administrative Law Judge	1
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Excerpt from General Counsel's Exhibit 11	3 - 4
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1 Q Local 1?

2 A Local 1.

3 Q About how many employees in that group?

4 A Approximately 25, which included the plate room
5 and the printing, the offset.

6 We had one electrician and we had one mechanic
7 or machinist.

8 Of course 119 had gone out as of -- we had seven
9 Unions prior to July 1st.

10 Q After July 1st did Arkay hire more employees?

11 A Yes, we did.

12 Q What was your turnover during the summer and fall
13 and winter?

14 A Approximately 300 per cent.

15 Q What was the average size of the work force during
16 that period?

17 A The average size would consist of approximately
18 125 people in the plant.

19 Q 25 of whom belonged to ALA 1?

20 A Yes.

21 Q And then the rest of whom were --

22 A 1, 23, 1 and 119..

23 MR. HUSBAND: I request the Reporter mark this
24 for identification, please.

25

PART VI — WELFARE TRUST FUND

61. The League and the Union have executed a separate agreement which is included in the back of this Contract providing for the establishment of a Welfare Trust Fund for the benefit of all journeymen and apprentice employees covered by this Contract.

PART VII — PENSION FUND

62. The League and the Union have executed a separate agreement to provide pensions for journeymen and apprentice employees covered by this contract. This agreement provides that the members of the League shall contribute to a Fund to be known as the Printers League-Pressroom Unions Pension Fund and that each member of the League shall contribute the sum of one dollar and eighty cents (\$1.80) (\$1.95 with vacation adjustment) for all shifts worked and paid for in any fiscal week for each journeyman and apprentice employee covered by this contract.

Effective April 8, 1972, the above shall be changed to read as follows:

Effective April 8, 1972, in addition to the wages as set forth, the League and the Union have executed a separate agreement to provide pensions for journeymen and apprentice employees covered by this Contract. This agreement provides that the members of the League shall contribute to a Fund to be known as the Printers League-Pressroom Unions Pension Fund and that each member of the League shall contribute weekly the sum of five percent (5%) of gross earnings of each journeyman and apprentice employee covered by this contract.

Payments to the Trust Fund hereinabove mentioned shall be accepted from employers not presently members of the Printers League Section but having substantially similar collective bargaining agreements with the Union and, to the extent that the Trust Agreement may so provide, from the Union for its officers and employees, and the Fund for its Administrator and office employees, provided that such payments shall be made on the same basis as herein set forth.

Any contributing Employer who fails to make contributions to the Fund as required shall be liable for expenses of collection (at 25% of amount owed the Fund) incurred by the Trustees, and for interest at the rate of 6% on the amount owed the Fund.

This separate agreement as executed shall not be the subject of further negotiations between the parties prior to March 3, 1974.

PART VIII — E., R. & S.U.B. AND INCOME SECURITY FUNDS

63. Relocation & Displacement/Education & Retraining Funds: To be combined as one jointly Trusteed Fund between Printers League and Local 51 to be hereinafter called New York Printing Pressmen Union 51, Printers League Education, Relocation and Supplemental Unemployment Fund (E., R. & S.U.B.) Effective April 8, 1971 contributions to be 1½% of gross earnings for journeymen and apprentice employees. Effective October 1, 1971, contributions to be at the rate of 2% of gross earnings for all journeymen and apprentice employees. The combined Fund will necessitate a new Trust Agreement and the scope and objectives of the resultant Fund will be broadened.

64. Effective April 8, 1971 the New York Printing Pressmen and Offset Workers' Union Local 51, Printers League Income Security Fund was formed. Contributions paid by the Employer are \$1.40 plus 12¢ vacation adjustment, totalling \$1.52 per shift, five shifts per week maximum.

The purpose of this Fund is to provide a balanced program in which a member has cash liquidity at retirement in addition to his pension and Social Security. This plan also provides a member the advantage of a combination of fixed dollars and equity dollars.

PART IX — PRESSROOM FOREMEN

65. Where there is more than one pressman employed there shall be a foreman and he shall be the only person to whom application shall be made for a situation. He shall be the only person for employing and discharging employees.

66. No foreman shall run a press or cut or manufacture overlays where there are more than seven cylinders running.

67. There shall be a working foreman employed in all departments of offset and rotogravure preparatory work, where there are seven or more journeymen employed.

For purposes of this Section an employee shall be considered a temporary employee and/or substitute if upon hire he is told (1) that he is being hired specifically to take another employee's place who is out ill or out for any reason on other than a permanent basis; or (2) that he is being hired specifically for a given job which has come into the shop and this employment will terminate when that work is completed. Also, any employee who has not worked in a plant for a minimum of five (5) consecutive working days during the three months preceding the layoff, shall be considered a temporary employee.

Any employee quitting his position must notify the foreman forty-eight (48) hours prior to the close of his last working shift that he will be quitting his position, or forfeit the pay of two shifts if he fails to give such notice. This penalty shall not apply, however, where an employee quitting his position because of recall to another shop advises the office directly upon being notified of such recall.

57. In the event of discharge or lay-off of an employee, if he considers that he has been discriminated against, upon demand the foreman shall give the reason for discharge in writing, and the employee shall have the right to trial before a Joint Committee consisting of three members of the League and three members of the Union, which Joint Committee shall select a Chairman from their number. After considering all of the evidence in connection with the reason for discharge, effort at agreement shall be made, and, if a decision is reached, it shall be final and shall be so accepted by both parties to the controversy. If agreement cannot be reached, the Committee shall select a seventh man, and the decision of the Committee thus constituted shall be final.

58. When the foreman finds it necessary to "slide" the force, employees must be rotated or

laid off in order of seniority as the nature of the work requires. The Chapel Chairman shall not be discriminated against in the rotation of the force.

An employee working ninety (90) days or longer in an office who is laid off for lack of work or any other valid reason excluding discharge for cause shall be the first to be rehired within 30 days if the firm needs additional employees for work they had regularly performed.

59. Members holding Union office shall retain their seniority in the plant in which they last worked and their tenure in office shall be added to their seniority. If at such time a member holding union office returns to the plant in which they hold seniority, they must demonstrate competence on the equipment in that plant.

Sanitary Conditions

60. The employer shall furnish at all times a healthful, sufficiently ventilated, properly heated and well-lighted space for the performance of all work and all sanitary conditions shall be in accordance with the laws of the State of New York and the New York City Health Codes. Employers covered by this Contract shall also maintain, as a minimum, locker facilities for hanging clothes during working hours.

The parties agree that, during the life of the contract, a health and welfare study will be made in the interest of safeguarding the health and welfare of the employees covered by this contract. Any expenses related to such study shall be borne by the Relocation and Displacement Fund.

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PART VI—WELFARE TRUST FUND

61. The League and the Union have executed a separate agreement which is included in the

back of this Contract providing for the establishment of a Welfare Trust Fund for the benefit of all journeymen and apprentice and 23 W employees covered by this Contract.

PART VII—PENSION FUND

62. The League and the Union have executed a separate agreement to provide pensions for journeymen and apprentice employees covered by this Contract. This agreement provides that the members of the League shall contribute to a Fund to be known as the Printers League-Pressroom Unions Pension Fund and that each member of the League shall contribute the sum of one dollar and eighty cents (\$1.80) (\$1.95 with vacation adjustment) for all shifts worked and paid for in any fiscal week for each journeyman and apprentice employee covered by this contract.

Effective June 1, 1972, the above shall be changed to read as follows:

Effective June 1, 1972, in addition to the wages as set forth, the League and the Union have executed a separate agreement to provide pensions for all employees covered by this contract. This agreement provides that the members of the League shall contribute to a Fund to be known as the Printers League-Pressroom Unions Pension Fund and that each member of the League shall contribute weekly the sum of five percent (5%) of gross earnings of each journeyman and apprentice employee and 23-W employees covered by this contract.

Payments to the Trust Fund hereinabove mentioned shall be accepted from employers not presently members of the Printers League Section but having substantially similar collective bargaining agreements with the Union and, to the extent that the Trust Agreement may so provide, from the Union for its Administration and office employees, provided that such payments

shall be made on the same basis as herein set forth.

Any contributing Employer who fails to make contributions to the Fund as required shall be liable for expenses of collection (at 25% of amount owed the Fund) incurred by the Trustees, and for interest at the rate of 6% on the amount owed the Fund.

This separate agreement as executed shall not be the subject of further negotiations between the parties prior to April 30, 1974.

PART VIII—PRINTERS LEAGUE-NEW YORK PRINTING PRESS ASSISTANTS' & OFFSET WORKERS' UNION NO. 23 RELOCATION AND DISPLACEMENT FUND

63. Effective on or after June 1, 1971, the League and the Union shall execute a separate agreement providing for the establishment of the Printers League-New York Printing Press Assistants' & Offset Workers' Union No. 23 Relocation and Displacement Fund for the benefit of all employees covered by this agreement. It is agreed that this Fund will be jointly administered by the League and the Union to provide benefits for long-term employees whose jobs are affected through mergers, consolidations, purchases, terminations, plant relocations, and other related causes, under eligibility rules to be established by a joint League-Union Board of Trustees.

As per agreement, contributions to such Fund to be one percent (1%) of the gross earnings of all journeymen and apprentice employees covered by this agreement. This contribution

discharged, without reasonable notice, and the Chairman must be notified.

Any employee quitting his position must notify the foreman at the start of the shift that he will be quitting his position at the end of the shift or forfeit a shift's pay for failure to give such notice.

58. In the event of discharge or lay-off of an employee, if he considers that he has been discriminated against, upon demand the foreman shall give the reason for discharge in writing, and the employee shall have the right to trial before a Joint Committee consisting of three members of the League and three members of the Union, which Joint Committee shall select a Chairman from their number. After considering all of the evidence in connection with the reason assigned for discharge, effort at agreement shall be made, and, if a decision is reached, it shall be final and shall be so accepted by both parties to the controversy. If agreement cannot be reached, the Committee shall select a seventh man, and the decision of the Committee thus constituted shall be final.

59. When the foreman finds it necessary to "slide" the force, employees may be rotated or laid off in order of seniority as the nature of the work requires. In case of permanent layoffs for lack of work, the Chairman shall be the last man laid off in his department provided there is work he is capable of performing.

SANITARY CONDITIONS

60. The Employers shall undertake to furnish clean, healthful, properly heated, lighted and ventilated offices for the performance of work. Complaints through the Union regarding unsafe or unhealthful conditions may be forwarded to the League for immediate action.

PART VI—WELFARE TRUST FUND

61. The League and the Union have executed a separate agreement which is included in the back of this Contract providing for the establishment of

a Welfare Trust Fund for the benefit of all employees covered by this Contract.

PART VII—PENSION FUND

62. The League and the Union have executed a separate agreement to provide pensions for journeymen and beginner employees covered by this contract. This agreement provides that the members of the League shall contribute to a Fund to be known as the Printers League-Pressroom Unions Pension Fund and that each member of the League shall contribute the sum of one dollar and eighty cents (\$1.80) (\$1.95 with vacation adjustment) for all shifts worked and paid for in any fiscal week for each journeyman and beginner employee covered by this contract.

Effective June 1, 1972, the above shall be changed to read as follows:

Effective June 1, 1972, in addition to the wages as set forth, the League and the Union have executed a separate agreement to provide pensions for journeymen and beginner employees covered by this Contract. This agreement provides that the members of the League shall contribute to a Fund to be known as the Printers League-Pressroom Unions Pension Fund and that each member of the League shall contribute weekly the sum of five percent (5%) of gross earnings of each journeyman and beginner employee covered by this Contract.

Payments to the Trust Fund hereinabove mentioned shall be accepted from employers not presently members of the Printers League Section but having substantially similar collective bargaining agreements with the Union and, to the extent that the Trust Agreement may so provide, from the Union for its officers and employees, and the Fund for its Administrator and office employees, provided that such payments shall be made on the same basis as herein set forth.

Any contributing Employer who fails to make contributions to the Fund as required shall be

liable for expenses of collection (at 25% of amount owed the Fund) incurred by the Trustees, and for interest at the rate of 6% on the amount owed the Fund.

This separate agreement as executed shall not be the subject of further negotiations between the parties prior to April 30, 1974.

PART VIII—PRINTERS LEAGUE- NEW YORK PAPER HANDLERS' & SHEET STRAIGHTENERS' UNION NO. 1 RELOCATION AND DISPLACEMENT FUND

63. Effective on or after June 1, 1971, the League and the Union shall execute a separate agreement providing for the establishment of the Printers League-New York Paper Handler's & Sheet Straighteners' Union No. 1 Relocation and Displacement Fund for the benefit of all employees covered by this agreement. It is agreed that this Fund will be jointly administered by the League and the Union to provide benefits for long-term employees whose jobs are affected through mergers, consolidations, purchases, terminations, plant relocations, and other related causes, under eligibility rules to be established by a joint League-Union Board of Trustees.

No contributions will be required to be made by the employer to such Fund since benefits shall be paid from existing funds. However, the Union has the option to direct monies from an interim contract scale increase scheduled for June 1, 1972 or June 1, 1973 into this Fund if it is determined by the Trustees that the existing resources are not adequate to maintain the level of benefits.

PART IX—FOREMEN

64. The foreman in charge of workroom shall be the only person to whom application shall be made for a situation. He shall be the only person for employing and discharging employees.

65. All orders for the pressroom shall emanate from the foreman, who shall be considered the representative of the employer. Any complaint over orders issued or action taken by the foreman, in pursuance of his duties as foreman, shall be disposed of in the same manner as other disputes arising under these rules. The foreman may be a member of the I. P. P. & A. U. of N. A.

PART X—CHARACTER OF WORK

66. An employee may be assigned to any position other than the position for which he was engaged, with the provision that if such other position carries with it a higher scale than the scale he has been receiving, he shall receive while filling that position the scale provided for the same. In no case shall an employee be paid for such temporary work at a scale lower than he has been receiving at his regular position.

Paper and/or Roll Handlers

67. The handling, hauling, packing, loading or unloading of paper in sheet form, whether packed in bundles (lapped, framed or packed flat) cased, baled or upon platforms, printed or unprinted, comes under this classification and all those employed in the above capacity shall be rated and compensated as such, provided that this does not apply to the handling of job press work printed or unprinted except when ordered by the foreman or man in charge. This proviso is not to apply to the laying out of uncut paper.

The handling, loading or unloading of paper in roll form, as well as the removing of its wrapper, trimming or stripping of same shall be rated and compensated as such.

Straighteners

68. The handling of paper in sheet form printed where it requires either winding, jogging, rolling, counting, stacking or transposing shall be rated and compensated as such.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NEW YORK PRINTING PRESSMEN AND
OFFSET WORKERS UNION, NO. 51,
INTERNATIONAL PRINTING AND
GRAPHIC COMMUNICATIONS UNION,
AFL-CIO, LOCAL NO. 23, NEW YORK
PRINTING ASSISTANTS AND OFFSET
WORKERS, INTERNATIONAL PRINTING
AND GRAPHIC COMMUNICATIONS UNION,
AFL-CIO, AND LOCAL 1, INTERNATIONAL
PRINTING AND GRAPHIC COMMUNICATIONS
UNION, AFL-CIO,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

ARKAY PACKAGING CORPORATION;

Intervenor.

No. 77-4194

CERTIFICATE OF SERVICE

The undersigned certifies that three (3) copies of the Board's
brief in the above-captioned case have this day been served by first class
mail upon the following counsel at the addresses listed below:

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Elliott Moore

Elliott Moore

Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.

this 17th day of February, 1978